UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

JAMIE CALMESE,	)	
	)	
Petitioner,	)	
	)	
vs.	)	**Case number 4:09cv1100 TCM**
	)	
STEVE LARKINS,	)	
	)	
Respondent.	)	

MEMORANDUM AND ORDER

Pending in this 28 U.S.C. § 2254 action is the motion of petitioner, Jamie Calmese, for the appointment of counsel.

In his 100-page typed petition, Petitioner seeks habeas relief from his conviction for first degree murder and armed criminal action on twelve grounds. Respondent argues that all but two grounds are procedurally barred and all twelve are without merit. In his pending motion, Petitioner seeks the appointment of counsel, alleging he has no funds with which to retain counsel.

There is no constitutional or statutory right to appointment of counsel in habeas corpus proceedings, see **Morris v. Dormire**, 217 F.3d 556, 558 (8th Cir. 2000); "instead, [the appointment of counsel] is committed to the discretion of the trial court," **McCall v. Benson**, 114 F.3d 754, 756 (8th Cir. 1997). In considering whether to appoint counsel, the factual and legal complexity of the case and the petitioner's ability to investigate and articulate his claims should be considered. **Morris**, 217 F.3d at 558-59; **McCall**, 114 F.3d at 756; **Nachtigall v. Class**, 48 F.3d 1076, 1081-82 (8th Cir. 1995). Counsel must be appointed, however, if an evidentiary hearing is to be held. See Rule 8(c), Rules Governing Section 2254 Cases in the

United States District Courts (mandating that counsel be appointed if an evidentiary hearing is to be held); accord **Armstrong v. Kemna**, 534 F.3d 857, 868 n.5 (8th Cir. 2008).

At this early stage in the proceedings, the issues articulately raised in the petition appear to be neither factually nor legally complex and to be capable of being resolved without an evidentiary hearing. Accordingly,

IT IS HEREBY ORDERED that Petitioner's motion for appointment of counsel is **DENIED**. [Doc. 4]

/s/ Thomas C. Mummert, III
THOMAS C. MUMMERT, III
UNITED STATES MAGISTRATE JUDGE

Dated this 19th day of October, 2009.